

HOUSE BILL 1771

By Powers

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 47 and Title 65, relative to social media.

WHEREAS, the General Assembly finds that social media platforms represent an extraordinary advance in communication technology for Tennesseans; and

WHEREAS, the General Assembly finds that users should be afforded control over their personal information related to social media platforms; and

WHEREAS, the General Assembly finds that Tennesseans increasingly rely on social media platforms to express their opinions; and

WHEREAS, the General Assembly finds that social media platforms have transformed into the new public town square; and

WHEREAS, the General Assembly finds that social media platforms have become as important for conveying public opinion as public utilities are for supporting modern society; and

WHEREAS, the General Assembly finds that social media platforms hold a unique place in preserving First Amendment protections for all Tennesseans and should be treated similarly to common carriers; and

WHEREAS, the General Assembly finds that social media platforms that unfairly censor, shadow ban, deplatform, or apply post-prioritization algorithms to Tennessee candidates, Tennessee users, or Tennessee residents are not acting in good faith; and

WHEREAS, the General Assembly finds that social media platforms should not take action in bad faith to restrict access or availability to Tennesseans; and

WHEREAS, the General Assembly finds that social media platforms have unfairly censored, shadow banned, deplatformed, and applied post-prioritization algorithms to Tennesseans; and

WHEREAS, the General Assembly finds that this State has a substantial interest in protecting its residents from inconsistent and unfair actions by social media platforms; and

WHEREAS, the General Assembly finds that this State must vigorously enforce state law to protect Tennesseans; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, is amended by adding SECTIONS 2-4 as a new chapter.

SECTION 2.

As used in this chapter:

(1) "Algorithm" means a mathematical set of rules that specifies how a group of data behaves and that:

(A) Assists in ranking search results and maintaining order; or

(B) Is used in sorting or ranking content or material based on relevancy or other factors instead of using published time or chronological order of the content or material;

(2) "Candidate" means an individual who runs or seeks to qualify for public office;

(3) "Censor" means:

(A) An action taken by a social media platform to delete, regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a right to post, remove, or post an addendum to content or material posted by a user; and

(B) An action to inhibit the ability of a user to be viewable by, or to interact with, another user of the social media platform;

(4) "Commission" means the Tennessee public utility commission;

(5) "Deplatform" means the action or practice by a social media platform to permanently delete or ban a user, or to temporarily delete or ban a user, from the social media platform for more than twenty-one (21) consecutive days;

(6) "Journalistic enterprise" means an entity doing business in this state that:

(A) Publishes in excess of one hundred thousand (100,000) words available online with at least fifty thousand (50,000) paid subscribers or one hundred thousand (100,000) monthly active users;

(B) Publishes one hundred (100) hours of audio or video available online with at least one hundred million (100,000,000) viewers annually;

(C) Operates a cable channel that provides more than forty (40) hours of content per week to more than one hundred thousand (100,000) cable television subscribers; or

(D) Operates under a broadcast license issued by the federal communications commission;

(7) "Official" means an individual who is elected or appointed to a public office;

(8) "Post-prioritization":

(A) Means an action by a social media platform to place, feature, or prioritize certain content or material ahead of, below, or in a more or less prominent position than others in a newsfeed, a feed, a view, or search results; and

(B) Does not include such actions with respect to content and material of a third party, including other users, based on payments by the third party to the social media platform;

(9) "Shadow ban":

(A) Means an action by a social media platform, whether the action is determined by a natural person or an algorithm, to limit or eliminate the exposure of a user or content or material posted by a user to other users of the social media platform; and

(B) Includes such actions by a social media platform that are not readily apparent to a user;

(10) "Social media" means an electronic medium that allows users to create and view user-generated content, including, but not limited to, uploaded or downloaded videos, photographs, or internet links, posts, blogs, audio files, instant messages, or emails;

(11) "Social media platform" means an information service, system, internet search engine, computer service, internet platform, or access software provider that:

(A) Provides or enables computer access by multiple users to social media; and

(B) Operates as a legal entity doing business in this state; and

(12) "User":

(A) Means a person who resides or is located in this state and who has an account on a social media platform, regardless of whether the person posts or has posted content or material to the social media platform; and

(B) Includes a journalistic enterprise.

SECTION 3.

(a) An operator of a social media platform authorizing users located in this state to post content or material on the platform shall, on or before January 1, 2023, and for each year thereafter, obtain a certificate of public convenience and necessity as a social media common carrier.

(b) The commission shall prescribe by rule the form on which application may be made for a certificate and the fee for the certificate. The commission may prescribe an equitable fee schedule based on a social media platform's gross annual revenue or the number of global individual platform participants.

(c) The operator of a social media platform shall disclose and file with the commission as part of the operator's application for a certificate all information relating to ownership and control of the company that is required to be filed with the federal communications commission.

SECTION 4.

(a)

(1) Except as otherwise provided in this chapter, a social media platform shall not willfully deplatform or shadow ban a user of the social media platform if the basis of such action is rooted in political ideology, viewpoint discrimination, or personal animus.

(2) Subdivision (a)(1) does not prohibit a social media platform from taking action to restrict access to, or the availability of, material in accordance with 47 U.S.C. § 230 that the social media platform considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, regardless of whether the material is constitutionally protected.

(b) If the commission, by its own inquiry or as a result of the filing of a written complaint by a user, suspects that a violation of this section is imminent, occurring, or

has occurred, then the commission may investigate the suspected violation. Based on its investigation, the commission may conduct a contested case hearing to take appropriate action in accordance with subsection (c).

(c) If the commission finds a violation of subdivision (a)(1) after a contested case hearing, the commission may:

(1) Fine the operator of a social media platform:

(A) For a user who is not a candidate for public office or an official, twenty-five thousand dollars (\$25,000) for each day the social media platform is not in compliance with subdivision (a)(1); or

(B) For a user known by the social media platform to be a candidate for public office or an official, one hundred thousand dollars (\$100,000) for each day the social media platform is not in compliance with subdivision (a)(1); and

(2) Suspend or revoke the certificate of public convenience and necessity of the social media platform indefinitely until the platform's operator provides the commission with proof satisfactory to the commission that the social media platform is in compliance with subdivision (a)(1).

(d) A user may bring a private cause of action for a violation of subdivision (a)(1). In addition to the damages that may be awarded under subsection (c), the court may award the following to the user:

(1) Actual damages;

(2) If aggravating factors are present, punitive damages;

(3) Other forms of equitable relief, including injunctive relief; and

(4) Costs and reasonable attorney fees.

(e) If the commission investigates an alleged violation of this section, then the commission's investigative powers include, but are not limited to, the ability to subpoena algorithms used by a social media platform related to the alleged violation.

(f) This section must be enforced:

(1) To the extent not inconsistent with 47 U.S.C. § 230 or other applicable federal law; and

(2) Notwithstanding other state law.

SECTION 5. The commission may promulgate rules to effectuate the purposes of this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 6. If a provision of this act or its application to a person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 7. This act takes effect upon becoming a law for purposes of promulgating rules and carrying out administrative duties necessary to effectuate the provisions and intent of this act, the public welfare requiring it. This act takes effect January 1, 2023, for all other purposes, the public welfare requiring it.